

SUPREME COURT OF WISCONSIN

CASE NO.: 03-0442-CR

COMPLETE TITLE:

State of Wisconsin,
Plaintiff-Respondent,
v.
Charles Chvala,
Defendant-Appellant-Petitioner.

REVIEW OF A DECISION OF THE COURT OF APPEALS
2004 WI App 53
Reported at: 271 Wis. 2d 115, 678 N.W.2d 880
(Ct. App. 2004-Published)

OPINION FILED: March 23, 2005
SUBMITTED ON BRIEFS:
ORAL ARGUMENT: January 6, 2005

SOURCE OF APPEAL:

COURT: Circuit
COUNTY: Dane
JUDGE: Daniel R. Moeser

JUSTICES:

CONCURRED:

DISSENTED:

NOT PARTICIPATING: WILCOX, PROSSER, and BUTLER, J.J., did not
participate.

ATTORNEYS:

For the defendant-appellant-petitioner there were briefs by *James A. Olson, Dixon R. Gahnz, John C. Carlson, Jr.* and *Lawton & Cates, S.C.*, Madison, and oral argument by *James A. Olson*.

For the plaintiff-respondent the cause was argued by *Barbara L. Oswald*, assistant attorney general, with whom on the brief was *Peggy A. Lautenschlager*, attorney general.

NOTICE

This opinion is subject to further editing and modification. The final version will appear in the bound volume of the official reports.

No. 03-0442-CR
(L.C. No. 02 CF 2451)

STATE OF WISCONSIN

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FILED

MAR 23, 2005

Cornelia G. Clark
Clerk of Supreme Court

REVIEW of a decision of the Court of Appeals. *Affirmed.*

¶1 PER CURIAM. The court is unanimous in determining that the charges against the petitioner do not violate the doctrine of separation of powers, nor do such charges involve a violation of the Speech and Debate Clause of the Wisconsin Constitution (Art. IV, § 16). Further, the court is unanimous in determining that Wis. Stat. § 946.12(3) (2001-02), the statute that the petitioner has been charged with violating, does not here circumscribe legitimate legislative activity and, therefore, is not overbroad. The court is also unanimous in determining that the issues presented are justiciable, in that

the political question doctrine does not interfere with the court deciding these matters.

¶2 The court is also unanimous in holding that the petitioner has standing to raise the issues related to Due Process, Fair Notice, and the vagueness of Wis. Stat. § 946.12(3) as applied, but the court is equally divided as to whether the petitioner has met the burden of establishing that the charges here violate those principles. Chief Justice Shirley S. Abrahamson and Justice Ann Walsh Bradley would affirm the court of appeals on those issues, and Justice N. Patrick Crooks and Justice Patience D. Roggensack would reverse on those issues.

¶3 Accordingly, the decision of the court of appeals is affirmed.

By the Court.—The decision of the court of appeals is affirmed.

¶4 Justices JON P. WILCOX, DAVID T. PROSSER, JR., and LOUIS B. BUTLER, JR. did not participate.

